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Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1217

This comment letter is submitted on behalf of MBNA America Bank, N.A. ("MBNA") in response to the advance notice of proposed rulemaking ("ANPR") and request for public comment by the Federal Reserve Board ("the Board"), published in the Federal Register on December 8, 2004. The ANPR is designed to solicit comments that would facilitate Board review of the open-end (revolving) credit rules of Regulation Z, which implements the Truth in Lending Act ("TILA"). MBNA appreciates the opportunity to comment on this important matter.

Overview

MBNA supports the Board's decision to undertake a comprehensive review of TILA, particularly in light of significant changes in consumer credit markets and in communications technology since TILA was broadly revised in 1980. We recommend strongly that the Board, in pursuing its review, allow four fundamental principles to guide and inform its ultimate decisions on the myriad of disclosure issues raised in the ANPR.

- ***Disclosures must be simple.***

Requirements that certain disclosure language be repeated periodically, contributes to the length of the current disclosures and to the "information overload" that causes far too many consumers to ignore disclosures entirely. Such a result is antithetical to Congress' purpose in enacting TILA: "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." (TILA, § 102(a)). The Board should make it a priority to shorten – and reduce repetition of – current disclosures, to focus its disclosure requirements on the most important terms that most consumers want and need to know, and to require additional disclosures only if they are demonstrably helpful and meaningful to consumers.

- ***Disclosures must be clear.***

While disclosures must be reasonably short and appropriately focused, they must also be organized and presented in ways that facilitate understanding by the average consumer and aid in comparing credit terms. As a general matter, we believe that increased use of consumer-tested model forms would be an effective way to present key information in a format and manner that would be understandable and meaningful to consumers. We further recommend that use of model forms and standardized definitions provide a “safe harbor” for institutions that choose to use them.

- ***Disclosures should be based on uniform national standards.***

The goal of greater simplicity and clarity in the disclosure process will not be achieved so long as states can impose their own disclosure requirements, which by definition vary from federal standards. It has never been demonstrated that state-specific disclosures, which add to the length of disclosures as well as the complexity (and cost) of the disclosure process, contribute to the achievement of TILA’s goals or provide any significant consumer benefits. We urge the Board to support such regulatory or legislative approach as may be necessary to insure uniform national disclosure standards.

- ***Disclosures should not be repetitive.***

In order to achieve maximum effectiveness with the consumer, key terms should not have to be disclosed in the account application and the summary of terms disclosed later. The purpose of Regulation Z can be better served by more effectively presenting the disclosures about terms and cost along with opportunities for identifying disclosures that are repetitive throughout the life of the account.

MBNA recommends that, in applying the above principles, the Board adopt a few guidelines and standards that we believe would contribute to increased simplicity, clarity and uniformity in the disclosure process. Specifically, we suggest the following:

- Base all decisions as to new or revised disclosures (both content and format) on thorough consumer research and testing. There is no reason or need to speculate on the effectiveness of consumer disclosures.
- Eliminate, wherever practicable, requirements for redundant redisclosure in periodic statements of information contained in account-opening documents. Provide clear guidance to consumers on how to obtain such information quickly and easily.
- Exclude transaction type fees in the calculation of the Annual Percentage Rate (APR); only the applicable interest rate should be included as this is the indicator that is most relevant to the consumer when shopping for credit.
- Eliminate “effective APR” as a term and concept.

Scope of the Review (Q1)

Q1. The Board solicits comments on the feasibility and advisability of reviewing Regulation Z in stages, beginning with the rules for open-end credit not home secured. Are some issues raised by the open-end credit rules so intertwined with other TILA rules that other approaches should be considered? If so, what are those issues, and what other approach might the Board take to address them?

While some of the issues raised by open-end credit rules are intertwined with other rules included in TILA, we believe it is appropriate to address separately the unique issues associated with open-end credit in today's dynamic consumer lending industry.

Account Opening Disclosures (Qs. 2-3)

Q2. What formatting rules would enhance consumers' ability to notice and understand account-opening disclosures? Are rules needed to segregate certain key disclosures from contractual terms or other information so the disclosures are more clear and conspicuous? Should the rules require that certain disclosures be grouped together or appear on the same page? Are minimum type-size requirements needed, and if so, what should the requirements be?

We believe there is a significant opportunity for account-opening disclosures to be improved and made more useful to consumers through the use of clear, concise, easy to read language and improved formatting. The tabular format used in the "Schumer Box" has been effective in disclosing key loan pricing information and thereby facilitating comparison-shopping for open-end credit. Our customers have consistently provided feedback that the information they are most likely to read is that which is provided within the Schumer Box.

Given the effectiveness of the tabular format, we feel consumers would benefit from inclusion of a second such box that would communicate other important account-opening information, including promotional rates, fees, trigger terms, "go to" rates, and expiration dates (see Attachment 1).

Presenting this important information in a tabular format would make it clearer and more conspicuous, and would assist consumers in comparing terms of different credit offers. In addition, use of such a tabular format should provide a "safe harbor" with respect to complying with Regulation Z

Q3. Are there ways to use formatting tools or other navigational aids for TILA's account-opening disclosures that will make the disclosures more effective for consumers throughout the life of the account? If so, provide suggestions.

Highlighting key terms contained in account-opening disclosures and grouping those terms together in a tabular format, could significantly enhance the ability of consumers to understand the terms of his or her account, and to make better informed decisions about using that account (or switching to a new account, if the terms of the latter are better aligned with his or her expectations or desires). Similar to the Schumer-box disclosures, the highlighted terms would

give the consumer a snapshot of information that would help him or her make informed decisions.

The number of terms highlighted must, however, be limited to avoid overwhelming the consumer with information. In determining the key terms that should be highlighted, MBNA believes the Board should focus on information that is essential for comparison shopping or is likely to affect a typical consumer's account usage or behavior, and should include only such disclosures as to which uniformity is both feasible and beneficial. This approach would lead to shorter and simpler disclosures that consumers will more likely read and understand. Increased understanding, in turn, will enable consumers to make better-informed decisions.

Periodic Statements (Qs. 4-6)

Q 4. Format rules could require certain disclosures to be grouped together or appear on the same page where it would aid consumer's understanding. For example, some card issuers disclose a 25-day grace period on the back of the periodic statement that can be used to calculate the payment due date; the same card issuer might also show a "please pay by date" on the front of the periodic statement that is based on a 20-day period. Some consumers might assume the 20-day period reflects the due date; other consumers may ascertain the actual due date by looking on the back of the statement. Potential consumer confusion might be reduced by requiring creditors to disclose the grace period or the actual due date on the first page of the statement, adjacent to the "please pay by" date. Is such a rule desirable? Are there other disclosures that should be grouped together on the same page?

We believe that credit users should not be required to redisclose on the periodic statement basic account information that the consumer does not need on a monthly basis.

We believe that the "Payment Due Date" should be on the front of the statement. We also believe this is standard industry practice and should be reflected as such. Pending reform legislation adequately addresses the issue of payment due date by providing for a clear and conspicuous disclosure on the statement that a late payment fee will be imposed if the customer fails to make payment by a certain date. This disclosure also provides the specific amount of the late fee. In addition, noted on the back of every periodic statement should be the time period during which the customer will not accrue finance charges ("Grace Period").

Q5. Could the cost of credit be more effectively presented on periodic statements if less emphasis were placed on how fees are labeled, and all fees were grouped together on the periodic statement? Are there other approaches the Board should consider? If so, provide suggestions.

We believe there are several ways that could present the cost of credit more effectively. Overall, we believe that the current requirements for information that must be provided on the periodic statement are excessive and should be reduced. Our experience indicates that providing additional repetitive text in a statement will not cause customers to read more. We feel that all current disclosure requirements should be reviewed in order to identify what information could

be eliminated from the statement. Statement information should focus strictly on information that provides real value to the customer, and is relevant to payments, transaction volume and finance charge activity for that month. We have discovered that much of the information currently provided on the statement is of interest only to a small percentage of our customers. We believe that eliminating those disclosures that provide the least value to the customer would result in a more effective and understandable periodic statement.

In the spirit of providing a more clear and concise periodic statement for our customers, we recommend the removal of both the balance calculation and payment allocation methodology. Our customer experiences indicate that very few inquiries are made with respect to balance calculation methodology and, more importantly, customer complaints related to balance computation are minimal. Those few customers that would like the specifics about balance calculation could obtain the information by referring to their initial terms and conditions, or by calling or writing us. Due to the competitive nature of the credit industry, there are relatively few balance calculation methods in use. We recommend that the Board act as a clearinghouse for language describing the various balance calculation methods used in the credit industry. This would be extremely beneficial to the consumer since it could enhance the consistency of the terminology used for the various calculation methods.

Our experience indicates that the customers have a good understanding of the payment allocation methods.

Q6. How could the use of formatting tools or other navigational aids make the disclosures on periodic statements more effective for consumers?

See response to Q3.

Credit Card Application Disclosures (Qs. 7-8)

Q 7. Is the “Schumer box” effective as currently designed? Are there format issues the Board should consider? If so, provide suggestions.

We believe the Schumer Box is an effective disclosure tool and functions well to provide the information it is designed to disclose. However, the overall effectiveness of the Schumer Box could be enhanced by eliminating the fine print underneath the box that discloses “trigger terms” and the conditions under which the APR may change. Our experience indicates that customers at times have difficulty with information in small print positioned below the “clear and conspicuous” information that appears within the Schumer Box.

We recommend the Board standardize the information provided outside the current box, either through additional rows of the existing box or through the addition of a second box that would incorporate this information within a standardized tabular format. We also suggest that critical financial terms should be disclosed once in the Schumer box, and should not also be required in the text of the application, as redundant disclosures are inherently unclear.

Q8. Balance transfer fees and cash advance fees may be disclosed inside the “Schumer box” or clearly and conspicuously elsewhere on or with the application. 12 CFR § 226.5a(a)(2)(i). Given the prevalence of balance transfer promotions in credit card applications and solicitations, should balance transfer fees be included in the Schumer box?

We believe the “Schumer Box” should be redesigned to accommodate three broad categories of variable account information that are most relevant to the Customer. These categories should include the annual percentage rate (APR), promotion rates, and transaction fees. The redesigned “box” could include a second box that provides other valuable information the consumer may need during the life of the account. This box would include trigger terms, “go to rate”, and the duration of any promotions being offered.

Based on the current dynamic nature of the open-end credit market, some flexibility should be provided to the issuer to accommodate new product offerings an issuer may develop. These flexible fields may include items such as qualifying conditions for points programs or promotions being offered by a merchant. A supplemental field could also be included that could accommodate variable terms such as payment allocation.

Use of this expanded format could eliminate the need for some of the redundant disclosures now required in the periodic statement. This would reduce the redundant information overload the consumer experiences at various points in the account cycle, and improve the timing of the disclosures that the consumer needs before activation of the account.

Subsequent Disclosures (Q 9.)

Q 9. Are there formatting tools or navigational aids that could more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures, such as those accompanying convenience checks and balance transfer checks? If so, provide suggestions.

Change in terms notices and other subsequent disclosures are clearly identified as such, and we do not see how more specific and inflexible formatting or navigational aids in account-opening disclosures would provide any discernible consumer benefits.

Our experience indicates however, that customers frequently find subsequent disclosures to be of limited utility due to variations in the ways terms are used and presented. Adopting standard definitions for some of the more common terms would aid customers in understanding their accounts and comparing credit offers. Terms that need a uniform industry definition include, “default rate”, “contract rate”, and “finance charge calculation”. The use of standard terms should provide a safe harbor for issuers who incorporate them into their disclosures.

We believe that increased use of standardized language and terms can ameliorate the information overload problem and reduce, perhaps eliminate, the need for redisclosing terms and conditions for promotions or balance transfer solicitations, which would benefit both consumers and issuers.

Model Forms and Clauses (Qs. 10-12)

Q 10. Should existing clauses and forms be revised to improve their effectiveness? If so, provide specific suggestions.

We suggest the Board consider reviewing at least the following clauses and forms with a view to standardizing terms and simplifying disclosures.

Balance Computation Methods

Balance computation methods should describe generally the method used to determine the finance charge at the end of each billing cycle. If model clauses are to be included in Appendix G, the Board should look at all of the methods currently in use and should create new model clauses based on those methods. Many creditors use a method that includes the balance on the account during the previous month (or 2 months) as well as current billing month (2 cycle average daily balance). Most creditors compound finance charges as part of the calculation of the average daily balance. In today's environment the methodologies used in determining the finance charge are difficult for the average consumer to understand or compute.

Liability for Unauthorized Use

Consumers should understand their liability for unauthorized use of their card, and how such liability may be eliminated or reduced. We support the current model clause as written, but believe the disclosure should be included in account-opening disclosures only. We believe there is no value in requiring redisclosure of such information on periodic statements.

Billing Rights Summary

The model form as written is generally effective in providing information in an understandable format, but we suggest that the Board consider the following modifications:

- The period for a creditor to correct billing errors, or explain why the creditor believes the bill is correct, should be expanded from 90 to 120 days to better align with timeframes allowed under MC/VISA regulations. Creditors are challenged to meet the timing requirements because of the time it takes to “reasonably investigate” a customer's claim and ultimately resolve a dispute.
- A model tabular box for billing disputes should replace the current short-form Billing Error Rights Model.
- We recommend that the Billing Rights Summary be delivered only at account-opening, and that disclosure in the periodic statement not be required.

Q11. Would additional model clauses or forms be helpful? If so, please identify the types of new model clauses and forms that the Board should consider developing.

See response to Q10. We believe model forms and clauses are helpful compliance tools and encourage the Board to consider additional model forms for initial disclosures that can function as safe harbors, and would provide standardized presentation of critical disclosure text.

Q12. In developing any proposed revisions or additions to the model forms or clauses, the Board plans to utilize consumer focus groups and other research. The Board is aware of studies suggesting that, for example, bolded headings that convey a message are helpful, but using all capital letters is not. Is there additional information on the navigability and readability of different formats, and on ways in which formatting can improve the effectiveness of disclosures?

We believe strongly that the amount of disclosure “overload” could be greatly reduced by adopting a format of a simple, plain language summary regarding pricing using predefined standardized terms. The current process produces disclosures that many customers cannot understand, or do not have time to read. We feel our customer’s understanding would be greatly improved if the detailed disclosure information came from the original account disclosures or subsequent amendments. This would result in the elimination of some of the disclosures many consumers find redundant or intimidating.

Classifying and labeling fees as “finance charges” and “other charges” (Qs. 13 – 20)

Q13. How could the Board provide greater clarity on characterizing fees as finance charges or “other charges” imposed as part of the credit plan? Under Regulation Z, finance charges include fees imposed as a condition of the credit as well as fees imposed “incident to” the credit. This includes “service, transaction, activity, and carrying charges.” 12 CFR § 226.4(b)(2). What types of fees imposed in connection with open-end accounts should be excluded from the finance charge, and why? How would these fees be disclosed to provide uniformity in creditors’ disclosures and facilitate compliance?

We believe the Board’s review of Regulation Z provides an excellent opportunity to provide needed clarity and simplification on the subject of the “finance charge”. We believe this goal could be realized by classifying all costs associated with the loan into two categories. 1) “finance charge” (the cost of using funds) 2) and “other charges” (all fees, penalties and other transaction related costs).

In order to simplify the subject and provide greater clarity for consumers, we recommend as a guiding principle that the finance charge should be the cost of credit that increases or decreases in tandem with the amount of debt outstanding. Therefore, the APR as initially disclosed would be the APR that continues to be disclosed on a periodic basis, subject only to a change in terms, customer default, or variation based on an underlying index, such as a change in the prime rate.

We feel that including fees in the finance charge is inappropriate and confusing, as it frequently causes a very significant “spike” in the effective APR that is confusing to consumers. In our

experience, such spikes are very difficult to explain to customers, leading to less rather than improved transparency and customer understanding of how payment amounts and cost of credit are computed. It is our position that all fees and other charges *should* be disclosed as an incremental transaction amount but *not* as part of the finance charge.

Q14. How do consumers learn about the fees that will be imposed in connection with services related to an open-end account, and any changes in the applicable fees?

Throughout the life of an account customers are notified about fees through the account application, periodic marketing materials, interaction with the Customer Service department, the Internet, verbal disclosures, and customer letters to address rate inquiries or to confirm balance transfers. Customers also learn about fees in disclosures provided before during and after a service transaction. This can best be illustrated in our products such as access checks and credit protection where disclosures are provided in the initial solicitation, in the actual product, along with the billing statement for the related service. In addition, written notice of any changes in applicable fees is provided to the customer at least 15 days in advance of effectiveness.

Q15. What significance do consumers attach to the label “finance charge,” as opposed to “fee” or “charge”?

Currently, we have no empirical data to ascertain the significance to consumers with regard to the term “finance charge” as opposed to the terms “fee” or “charge”.

Q16. Some industry representatives have suggested a rule that would classify fees as finance charges only if payment of the fee is required to obtain credit. How would creditors determine if a particular fee was optional? Would costs for certain account features be excluded from the finance charge provided that the consumer was also offered a credit plan without that feature? Would such a rule result in useful disclosures for consumers? Would consumers be able to compare the cost of the different plans? Would such a rule be practicable for creditors?

See response to Q.13

Q17. Some industry representatives have suggested a rule that would classify a fee as a finance charge based on whether the fee affects the amount of credit available or the material terms of the credit. How would such a standard operate in practice? For example, how would creditors distinguish finance charges from “other charges”? What terms of a credit plan would be considered material?

We strongly believe that any blending of fees and APR is more confusing than helpful to the consumer. We feel that combining fees and APR into an “effective APR” provides no meaningful cost comparison for the consumer. As stated previously, we believe consumers would be better served by classifying all costs associated with a loan into two categories: “finance charge” (the cost of using funds), and “other charges” (all fees, penalties, and other costs). The timing of this disclosure further diminishes the benefit to consumer of disclosing

“effective APR”. Since the consumer has already entered into a transaction, the information is of no value to the consumer upon receipt. We cannot support a rule that requires a disclosure that is confusing and of no value to the consumer.

Q18. TILA requires the identification of other charges that are not finance charges and may be imposed as part of the plan. The staff commentary interprets the rule as applying to “significant charges” related to the plan. Has that interpretation been effective in furthering the purposes of the statute? Would another interpretation be more effective? Criteria that have been suggested as relevant to determining whether the Board should identify a charge as an “other charge” include: the amount of the charge; the frequency with which a consumer is likely to incur the charge; the proportion of consumers likely to incur the charge; and when and how creditors disclose the charge, if at all. Are those factors relevant? Are there other relevant factors?

Currently, the definition of “other charges” is unclear, in part because of a lack of guidance on the meaning of “significant”. We feel that defining the criteria for “significant charges” does not provide a realistic solution for making the statute more effective. Based on the dynamic nature of the credit industry, criteria identified as effective today may not be considered effective over a longer period. Therefore we feel the Board should consider rules that identify and classify existing fees and provide appropriate examples of each.

Q19. What other issues should the Board consider as it addresses these questions? For instance, in classifying fees for open-end plans generally, do home equity lines of credit present unique issues?

We feel that due their special nature, the Board should consider home equity lines of credit separately. We agree that the nature of home equity lines do present unique issues in classifying fees. The Board must consider different types of transaction costs associated with home equity lines. These costs include early payoffs by customers, waiver of up front costs, and the defined fees unique to home equity lines. We feel this approach would insure that any of the general open-end credit rules applicable to home equity lines be modified separately with respect to other types of open-end credit.

Q20. How important is it that the rules used to classify fees for open-end accounts mirror the classification rules for closed-end loans? For example, the approach of excluding certain finance charges from the effective APR for open-end accounts is not consistent with the approach recommended by the Board for closed-end loans. In a 1998 report to the Congress concerning reform of closed-end mortgage disclosures, the Board endorsed an approach that would include “all required fees” in the finance charge and APR.

We believe that due to the significant difference between open-end and close-end credit, the Board should not necessarily apply the same rules to both. In particular, we do not believe that consistency in the area of fee classification is important or necessary.

Over-the-credit-limit-fees (Os. 21 – 22)

Q21. The staff commentary to Regulation Z provides guidance on when a fee is properly excluded from the finance charge as a bona fide late payment charge, and when it is not. See Comment 4(c)(2)-1. Is there a need for similar guidance with respect to fees imposed for exceeding a credit limit, for example, where the creditor does not require the consumer to bring the account balance below the originally established credit limit, but imposes an over-the-credit-limit fee each month on a continuing basis?

We believe an overlimit fee is similar to a late payment or NSF payment fee, in that it is imposed only if the customer fails to meet the terms and conditions disclosed for the account. It is an additional fee to the lender that is intended to compensate for the demonstrable higher risk of customers who cannot or will not pay on time, or remain within the assigned credit limit. Since this fee does not vary with the amount of credit extended, and is not imposed on a daily, recurring basis, it is not a periodic finance charge, and should be classified as a transaction based fee.

Q22. Because of technical limitations or other practical concerns, credit card transactions may be authorized in circumstances that do not allow the merchant or creditor to determine at the moment of the transaction whether the transaction will cause the consumer to exceed the previously established credit limit. How do card issuers explain to consumers their practice of approving transactions that might result in the consumer's exceeding the previously established credit limit for the account and being charged an over-the-credit-limit fee? When are over-the-credit-limit fees imposed; at the time of an approved transaction, or later such as at the end of the billing cycle? The Board specifically requests comments on whether additional disclosures are needed regarding the circumstances in which over-the-credit-limit fees will be imposed.

Over-the-credit-limit fees are thoroughly explained in account-opening disclosures and, subsequently, in customer interaction with the Customer Service department. Our experience indicates that customers understand over-limit fees quite well and would generally rather have the fee assessed than the transaction denied at the point of sale. Therefore, incremental disclosures related to over-limit fees are both unnecessary and impractical given the logistical difficulties of making them at the point of sale.

“Effective” Annual Percentage Rate on Periodic Statements (Os. 23 – 25)

Q23. Have changes in the market and in consumers' use of open-end credit since the adoption of TILA affected the usefulness of the historical APR disclosure? If so, how? The Board seeks data relevant to determining the extent to which consumers understand and use the historical APR - disclosed on periodic statements. Is there data on how disclosure of the historical APR affects consumer behavior? Is it useful to consumers to include in the historical APR transaction charges such as cash advance fees and fees to transfer balances from other accounts?

Use of an "effective APR" is misleading and is of little practical relevance to the consumer and should be eliminated from the periodic statement. Our experience with customer calls indicates that the concept is very cumbersome to explain. Attachment 2 demonstrates how a customer

could experience a different “effective APR” - varying from 14.7% to 1727.28%” - depending solely on the day on which an ATM transaction takes place.

Consumers generally do not view the “effective” or “historical” annual percentage rate on periodic statements to be helpful in comparing credit costs or making purchase decisions, and we recommend that the Board eliminate this disclosure from the periodic statement. This change would also better serve our customers by focusing our efforts and resources on helping them to more clearly understand the cost and terms of their loans.

While it is difficult to obtain quantitative data to support our view about effective APR disclosure, we did obtain feedback from Customer Service account managers from several regions who respond to customer telephone calls from across the US on a daily basis. Customers report that they notice the effective APR, but are confused because it does not correspond to the stated or contractual APR. The reason for the higher APR is not intuitive to most customers, and they are usually unable to correlate the effective APR to their account behavior, like transaction fees from cash advances.

It is important to point out that by the time the customer receives this disclosure, he or she has already made the transaction that caused the change in the effective APR. Account managers state that no customer has ever told them that the effective APR influenced a decision to borrow money or not to borrow additional amounts.

There is obviously no way to disclose the effective APR in an efficient and meaningful way prior to the customer making a transaction. As a result, the vast majority of our customers seem to believe, and we agree, that this disclosure provides little or no benefit in making credit decisions and comparisons.

Q24. Are there ways to improve consumers’ understanding of the effective APR, such as by providing additional context for the disclosure? For example, should consumers be informed that the effective APR includes fees as well as interest, and that it assumes the fees relate to credit that was extended only for a single billing period?

See response to Q.23

Q25. Are there alternative frameworks for disclosing the costs of credit on periodic statements that might be more effective than disclosing individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of all account-related fees assessed during the billing cycle, or the total dollar amount of fees by type? Would a cumulative year-to-date total for certain fees be useful for consumers?

We believe that a clear description of “transaction fees” as distinct from “other fees” would more effectively inform consumers in the account-opening process. In addition, the periodic statement should clearly label fees on their own transaction line, using a naming convention that is consistent with terms defined in account-opening disclosures.

We also feel that the Board should facilitate consistent definitions for all transaction fees to insure consistency among issuers. As previously stated, fees should not be included in the APR calculation.

Disclosures about rate changes (Os. 26 – 27)

Q26. Is mailing a notice 15 days before the effective date of a change in interest rates adequate to provide timely notice to consumers?

We believe the 15-day notification timeframe is adequate. Our business practices insure that our customers receive change notices well ahead of the effective date of the change. We feel that extending the notification period may cause confusion to some consumers who may forget about a change.

Q27. How are account-holders alerted to increased interest rates due to consumers' default on this account or another credit account? Are existing disclosure rules for increases to interest rates and other finance charges adequate to enable consumers to make timely decisions about how to manage their accounts? If not, provide suggestions.

Consumers are typically alerted to the consequences of delinquency or default on their account in advance, in the disclosures at account opening. The new rate triggered by a delinquency or default appears on the periodic statement. To facilitate comparison among competing offers from different issuers, we suggest a standardized format or model language to describe the issuer's grounds for repricing and the consequences of default, at account-opening or on direct mail solicitations, so that issuers' rules can be compared. A safe harbor should be provided for initial disclosures using model (or substantially similar) language. The periodic statement should reflect the new rate for the billing cycle in which the change takes place.

For the proposed model language, it would be desirable to obtain data on consumer's understanding of the word "default" and other terminology that may be unclear.

Balance Calculation Methods (Os. 28 – 30)

Q28. How significantly does the balance calculation method affect the cost of credit given typical account use patterns?

The balance calculation method can affect the cost of credit for typical consumers (i.e. one-cycle versus two-cycle billing). The effect is most significant for consumers who do not pay the account in full each month. The impact of this effect is dependent on the number of variables that impact the calculation.

Q29. Do consumers understand that different balance calculation methods affect the cost of credit, and do they understand which balance calculation methods are more or less favorable for consumers? Would additional disclosures at account-opening assist consumers and, if so, what type of disclosures would be useful?

Our Customer experience indicates that while most customers do not understand how their balance is calculated, it is also not a matter of great concern to them (i.e. they believe it is calculated fairly and accurately). We believe that the subject is sufficiently complex and it would be extremely difficult to develop additional disclosures that would be clear, concise, meaningful, and of significant interest to most consumers.

Q30. Explanations of balance calculation methods are complex and may include contractual terms such as rounding rules. Precise explanations are required on account-opening disclosures and on periodic statements. Should the Board permit more abbreviated descriptions on periodic statements, along with a reference to where consumers can obtain further information about the calculation method, such as the credit agreement or a toll-free telephone number?

We support simple, standardized descriptions, whether at account opening or on periodic statements, with clear directions on how to obtain further information. Longer descriptions, particularly on the periodic statement, will likely cause even more information overload. Our review of customer service calls indicates that fewer than 1% of calls relate to balance calculation. The account agreement, a credit card “users’ guide”, or the Internet would be a more informative source for explanation of the balance calculation method being used.

Minimum Payments (Os. 31 – 33)

Q31. Is it appropriate for the Board to consider whether Regulation Z should be amended to require: (1) periodic statement disclosures about the effects of making only the minimum payment (such as, disclosing the amortization period for their actual account balance assuming that the consumer makes only the minimum payment, or disclosing when making the minimum payment will result in a penalty fee for exceeding the credit limit); (2) account-opening disclosures showing the total of payments when the credit plan is specifically established to finance purchases that are equal or nearly equal to the credit limit (assuming only minimum payments are made)? Would such disclosures benefit consumers?

We believe that minimum-payment disclosures are not useful to the majority of customers, and are at variance with the concept of revolving open end-credit. It is contemplated at the inception of the plan that advances and payments will vary greatly over the life of the agreement, so an amortization or minimum payment disclosure could vary greatly from month to month. Such fluctuating disclosure will decrease clarity rather than enhance it. Our experience indicates that a very small percentage of customers make a (contractual) minimum payment over an extended period of time.

Additionally, recent FFIEC guidance has required credit card lenders to increase minimum payment requirements for all borrowers, with the net result being a reduction in overall amortization periods for open end credit advances.

Minimum-payment disclosure is a subject of the bankruptcy reform bill currently pending before Congress that we expect to be enacted (Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 – Senate Bill 256). The new law may mandate the inclusion of standard illustrative

examples on periodic statements, combined with a toll-free number that customers can call to receive disclosures specific to their accounts.

Q32. Is information about the amortization period for an account readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of implementing such a rule?

Most open-end credit card accounting systems were not designed to provide specific amortization schedules at the account level, since this has never been a disclosure requirement for open-end credit, nor has there been any meaningful number of customer requests to provide it. Development of such functionality would be very expensive, and any resulting amortization schedules would fluctuate greatly from month to month due to the revolving nature of open-end credit. It is simply not possible to produce a meaningful schedule where so many variables are involved in the calculation, including fluctuating balances, and variables related to interest rates, payment amounts, and payment timing.

Q33. Is there data on the percentage of consumers, credit cardholders in particular, that regularly or continually make only the minimum payments on open-end credit plans?

Our monitoring of customer payment practices and the credit card industry generally indicates that a very small percentage of cardholders make only minimum payments on a regular and continuing basis. In a recent payment analysis completed in 2004, we ascertained that the average monthly payment of customers who revolve a monthly balance is at least 10% of their balance; for the credit card industry as a whole, the average monthly payment totaled 9%. A separate analysis showed that only a fraction of our active account population makes consecutive minimum payments, e.g., only 1.9% of our customers make a minimum payment for three consecutive months. For every month after three months, the number of customers we would consider “consistent” minimum payers is less than 1% of our active account population. Since 2003, the average revolving payment as a percent of outstanding account balance has continued to increase.

In response to recent OCC account management guidance, national banks will be required to increase minimum monthly payment requirements in 2005. The new minimum payment will now include all finance charges, plus late fees, plus a 1% contribution towards the ending principal balance. This new minimum payment represents an overall increase over the previous minimum payment amount, and will drive payment rates.

Payment Allocation (Os. 34 – 36)

Q34. What are the common methods of payment allocation and how much do they affect the cost of credit for the typical consumer?

Under the prevailing method of payment allocation, payments are allocated first to finance charges and fees, then to outstanding principal balances in order of increasing APRs, (i.e. balances at lower promotional offers are paid down faster than those associated with higher APR contract rates.) Some creditors use a “pro-rata” allocation in proportion to balances in the

segments, (such as cash, purchase, and transfer) or payment allocations in which different segments are paid in a predetermined order.

Q35. Do creditors typically disclose their allocation methods, and if so, how?

We provide payment allocation disclosures to our customers at various points throughout the life of the account. The first payment allocation disclosure is included as part of the initial credit application and is then disclosed again in the initial terms and conditions sent out at the time an account is opened.

Q36. Is it appropriate for the Board to consider whether Regulation Z should be amended to require disclosure of the payment allocation method on the periodic statement? Would such a disclosure materially benefit consumers? Some creditors offer a low promotional rate, such as a 0% APR for cash advances for a limited time and a higher APR for purchases. Creditors typically do not allocate any payments to purchases until the entire cash advance is paid off. Are additional disclosures needed to avoid consumer confusion or misunderstanding? What would the cost be to creditors of providing such a disclosure? What level of detail would provide useful information while avoiding information overload?

Notwithstanding the fact that we currently disclose our payment allocation methodology on the periodic statement, we do not think it is appropriate for the Board to amend the rules to require disclosure of the payment allocation on the periodic statement. Our account application and initial terms and conditions clearly state that payments are allocated to balances with a lower APR first. Such practices are common throughout the industry, and we see little need to disclose repeatedly to customers terms that are clearly disclosed at the inception of the account. Such disclosure does not materially benefit the customer because once the transaction is reflected on the statement the customer is past the point of making an educated decision about the relevant impact.

Tolerances (Q. 37)

Q37. What tolerances should the Board consider adopting pursuant to this provision? Should the Board expressly permit an overstatement of the finance charge on open-end credit? Would that adequately address concerns over proper disclosure of fees? How narrow should any tolerance be to ensure TILA's goal of uniformity is preserved?

As previously discussed, we recommend elimination of fees from the APR calculation, a step that would eliminate the complexities that support the need for tolerances.

Other Questions Regarding Content of Disclosure (Qs. 38-42)

Q38. In considering changes to the disclosures required by Regulation Z, the Board seeks data relevant to the costs and benefits of the proposed revisions. Accordingly, commenters proposing revisions to the disclosure requirements are requested to provide data estimating the cost difference in complying with the existing rules compared to any proposed alternatives, including any one-time costs to implement the changes.

Estimates of the costs and benefits of proposed revisions are not yet available. However, we believe that the proposals we have made in this letter are feasible and worthwhile in light of the additional simplicity and clarity they will provide for consumers.

Q39. Are there particular types of open-end credit accounts, such as subprime or secured credit card accounts, that warrant special disclosure rules to ensure that consumers have adequate information about these products?

All accounts should have simple and clear disclosures, including a clear disclosure of the available credit limit or, in initial solicitations, the range of credit limits that will be available. Subprime accounts (which are not defined in regulation) do not warrant special rules, nor do we believe it would be feasible to craft special rules for consumers depending on their FICO scores, which will vary greatly over the course of the credit agreement.

We have no comments on subprime or secured cards at this time.

Q40. Are there additional issues the Board should consider in reviewing the content of open-end disclosures? For example, in 2000, the Board revised the requirements for disclosures that accompany credit card applications and solicitations. 65 FR 58903, October 3, 2000. Is the information currently provided with credit card applications and solicitations adequate and effective to assist consumers in deciding whether or not to apply for an account?

While we believe the disclosure revisions the Board made in 2000 benefited consumers by adding clarity and facilitating comparability, and that additional progress in those areas is needed and can be achieved. We have made suggestions to that end throughout this letter.

Q41. Are there classes of transactions for which the Board should exercise its exemption authority under 15 U.S.C. 1604(a) to effectuate TILA's purpose, facilitate compliance or prevent circumvention or evasion, or under 15 U.S.C. 1604(f) because coverage does not provide a meaningful benefit to consumers in the form of useful information or protection? If so, please address the factors that the Board is required to consider under the statute.

The current exemptions are reasonable. We believe that most creditors voluntarily supply TILA disclosures in many exempt transactions, particularly business credit transactions over \$25,000 not secured by real property.

Q42. Should the Board exercise its authority under 15 U.S.C. 1604(g) to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?

The current exemptions are reasonable.

Substantive Protections For Open-End Accounts (Os. 43-58)

General (Q. 43)

Q43. The Board solicits comments on whether there is a need to revise the provisions implementing TILA's substantive protections for open-end credit accounts. For example, are the existing rules adequate, and if not, why not? Are creditors' responsibilities under the rules clear? Do the existing rules need to be updated to address particular types of accounts or practices, or to address technological changes?

We believe there are several provisions of the Billing-Error Resolution protections that need clarification and modification to accommodate changes in technology and account practices. In addition, the categories, dollar limits, and thresholds appear to be out-dated. We also feel that to investigate effectively some billing error notices, the time for resolution should be extended from 90 days to 120 days.

We feel the definition of "reasonable investigation" provided under §226.13(f) is vague and may lead to inconsistent application of the rules among credit card issuers. While we believe a more specific definition of this term would be helpful, we urge the Board to insure that credit issuers are permitted flexibility in approaching different factual situations.

Accessing Credit Card Accounts (Q. 44)

Q44. Information is requested on whether industry has developed, or is developing, open-end credit plans that allow consumers to conduct transactions using only account numbers and do not involve the issuance of physical devices traditionally considered to be credit cards. If such plans exist, what policies do such creditors have for resolving accountholder claims when disputes arise?

Currently, this capability exists through multiple channels such as the Internet and mail/telephone ordering. In today's environment, these disputes are investigated and processed in the same manner as when a card is present. In these cases, however, the burden of proof is on the merchant to prove the transaction is valid. Access check disputes are investigated the same as retail disputes, but are currently not enforceable with the merchants.

Additionally we provide a secured shopping service that provides a temporary account number to our customers who are shopping on the Internet and mail/telephone ordering. This temporary account number provides an additional level of security to protect the customer from fraudulent charges processed through riskier retail channels.

“Convenience Checks” (Q. 45)

Q45. Have consumers experienced problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should the Board consider extending any of TILA’s protections for credit card transactions to other extensions on credit card accounts and, in particular, convenience checks?

We recognize the concerns the Board may have regarding unauthorized use or merchant disputes related to convenience checks. However, we do not support extending additional protections to convenience checks above those that currently exist. Extending the billing error protections currently provided to credit card transactions to convenience checks would impose significant operational and financial challenges on convenience check issuers. Since convenience checks are processed outside of the payment card system, card issuers would absorb a significant financial liability for these checks, since issuers do not have chargeback rights on these transactions. We feel that fraudulent or unauthorized convenience checks should be the only items covered by the protections of TILA. For these transactions we provide a simple and efficient process of reporting convenience check fraud and removing the fraudulent balance from the account.

Unsolicited Issuance of Credit Cards (Q. 46)

Q46. Should the Board consider revising Regulation Z to allow creditors to issue additional credit cards on an existing account at any time, even when there is no renewal or substitution of a previously issued card? If so, what conditions or limitations should apply? For example, should the Board require that the additional cards be sent unactivated? If activation is required, should the Board allow issuers to use alternative security measures in lieu of activation, such as providing advance written notice to consumers that additional cards will be sent?

We believe the Board should permit a credit card issuer to send an additional credit card under an existing credit card plan, even if the additional card is not sent in connection with a renewal or substitution, provided there is no additional consumer liability.

Prompt Crediting of Payments (Qs. 47–51)

Q47. What are the cut-off hours used by most issuers for receiving payments? How do issuers determine the cut-off hours?

Prompt crediting of payments is a key element of our commitment to providing superior service to our customers. We maintain a policy of posting payments 365 days a year, including holidays. All “conforming payments” received by 2 pm are credited the same day they are received, and the definition of a conforming payment is clearly disclosed on the back of the periodic statement. The 2 pm posting time was determined to give the best availability to the customer while providing MBNA with sufficient time to process and post these payments.

Q48. Do card issuers' payment instructions and cut-off hours differ according to whether the consumer makes the payment by check or electronic fund transfer, or by using the telephone or Internet? What is the proportion of consumers who make payments by mail as opposed to using expedited methods, such as electronic payments?

We define a conforming payment as “single payment and remittance stub sent through the US Postal Service to MBNA in the return envelope provided by MBNA.” In addition, we remind customers of this definition with payment instructions on the back of all periodic statements.

All other payments fall into the “non-conforming” category, except for electronic funds transfer (EFT), wire transfers and express mail payments, which are processed the day of receipt. Internet payments are processed through a third-party vendor; Currently, 78% of our payments are received by mail, 13% through EFT, and 9% are received through the Internet.

Q49. Do the existing rules and creditors' current disclosure practices clearly inform cardholders of the date and time by which card issuers must receive payment to avoid additional fees? If not, how might disclosure requirements be improved?

MBNA discloses the mail cut-off time on the back of the remittance slip, along with instructions on where and how to submit the payment. Customers who pay by phone are advised of the cut-off time during the telephone call. Customers who pay on-line are advised of the cut-off time on the web site. In light of these practices, we believe current disclosures are clear and conspicuous to customers and we do not see a need for further regulatory disclosure requirements.

Q50. Do the operating hours of third-party processors differ from those of creditors, and if so, how? Do creditors treat payments received by a third-party processor as if the payment was received by the creditor? What guidance, if any, is needed concerning creditors' obligation in posting and crediting payments when third-party processors are used?

We treat a payment delivered to our affiliated financial institutions as if it had been delivered to MBNA at the same time.

Q51. Should the Board issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time?

We do not believe that the Board should issue a rule requiring creditors to credit payments as of the date they are received, irrespective of the time of receipt. Significant processing time is required to complete the manual-intensive processing of paper checks, and to insure accurate same-day posting of payments as of the cut off time. Our payments center processes over a half a million payments a day. Payments are picked up from the post office, scanned for returned plastics, opened, sorted, filmed, and keyed. The manual keying process includes two individual entries to insure accuracy. In order to complete these steps, and accommodate nightly data processing requirements and daily volume fluctuations, a rigid requirement for same day posting would necessitate backdating of payments.

Applying a similar rule to non-conforming payments would create issues with the proper tracking and posting of these payments because these are more labor intensive.

Request for Comment on Additional Issues (Os. 52-58)

No comments at this time.

* * *

MBNA appreciates the opportunity to comment on these matters. If you have any questions concerning these comments, or if we may otherwise be of assistance, please do not hesitate to contact the undersigned.

MBNA America Bank, N.A.

/s/Louis J. Freeh

Louis J. Freeh
General Counsel
(302) 432-1490

Attachment 1

Proposed Promotional Offer “Fed Box”

Promotional Annual Percentage Rate (APR)	2.99% Introductory APR for Balance Transfers and Cash Advance Checks. Your promotional APR does not apply to purchases or quasi cash transactions
Promotional APR(s) Ends	Your billing cycle that closes in July 2005, or earlier if any payment is not received by the payment due date or if any payment is returned for insufficient funds
Transaction Fees for all Cash Advance Checks or Balance Transfers	3% of the cash advance amount, with a minimum of \$10 and a maximum of \$75 for each cash advance
“Go To” or contractual APR after promotional APR expiration	9.99% APR for all cash and retail balances
Default or Penalty APR	Contract APR may increase from 9.99% to 24.99% if balance is over the credit line or account is past due
Payment Allocation	If your account has balances with different APRs, your payments are applied to the balance with the lowest APR before any payments are applied to balances with higher APRs. This means that balances with higher APRs are not reduced until balances with lower APRs have been paid off.
Minimum Payment Due	2.5% of new balance

Attachment 2

Effective Yield

Impact of ATM transaction date Prior balance on Effective Yield

Example Number	ATM cash advance	Transaction Days Prior to Cycle End	Cash Fee	Exiting Cash Bal	Cash Balance APR	Avg Daily Balance, 1st month billed	Cash Fee + F/C, 1st month	Annual effective yield, 1st month billed	Avg Daily Balance, 2nd month billed	Cash Fee + F/C, 2nd month	Annual effective yield, 2nd month billed
1	\$100	1	\$5	\$0	12.99%	\$3.50	\$5.04	1727.28%	\$105	\$1.14	12.99%
2	\$100	2	\$5	\$0	12.99%	\$7.00	\$5.08	870.13%	\$105	\$1.14	12.99%
3	\$100	15	\$5	\$0	12.99%	\$52.50	\$5.57	127.28%	\$105	\$1.14	12.99%
4	\$100	29	\$5	\$0	12.99%	\$101.50	\$6.10	72.10%	\$105	\$1.14	12.99%
5	\$100	29	\$5	\$1,000	12.99%	\$1,101.50	\$16.92	18.44%	\$1,105	\$11.96	12.99%
6	\$100	29	\$5	\$5,000	12.99%	\$5,101.50	\$60.22	14.17%	\$5,105	\$55.26	12.99%